

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION**

Kelly Murphy,

Petitioner,

v.

Case No. 1:09-cv-888

Warden, Lebanon Correctional Institution,

Judge Michael R. Barrett

Respondent.

ORDER

This matter is before the Court on the Report and Recommendation ("Report") filed by Magistrate Judge Michael R. Merz on April 27, 2011 (Doc. 14). Proper notice has been given to the parties under 28 U.S.C. § 636(b)(1)(C), including notice that the parties would waive further appeal if they failed to file objections to the Report in a timely manner.¹ See *United States v. Walters*, 638 F.2d 947 (6th Cir. 1981).

However, the Court notes that although such notice was served upon Petitioner, it was returned to the Court due to Petitioner's failure to apprise the Court of his change of address. In this Court's notice to Petitioner on applicable court procedures, which Petitioner received, Petitioner was ordered to inform the Court promptly of any change of address. By failing to keep the Court apprised of his current address, Petitioner demonstrates a lack of prosecution of his action. See, e.g., *Theede v. U.S. Dep't. of Labor*, 172 F.3d 1262, 1265 (10th Cir. 1999) (holding that failure to object to a magistrate judge's report and recommendation because of party's failure to bring to the court's attention a change in address constitutes failure to object in a timely manner, and holding that because the report was mailed to the last known address, it was

¹ Notice was attached to the Report regarding objections. (Doc. 14, 17.)

properly served and party waived right to appellate review); *see also Jourdan v. Jabe*, 951 F.2d 108, 110 (6th Cir. 1991) (holding that a pro se litigant has an affirmative duty to diligently pursue the prosecution of his cause of action); *Barber v. Runyon*, No. 93-6318, 1994 WL 163765, at *1 (6th Cir. May 2, 1994) (holding that a pro se litigant has a duty to supply the court with notice of any and all changes in his address).

Thus, no objections to the Report have been filed. Having reviewed this matter de novo pursuant to 28 U.S.C. § 636, this Court finds the Report to be correct. It is **ORDERED** that the Report is hereby **ADOPTED**. As the Report recommends (Doc. 14, 17), the Petition is DISMISSED with PREJUDICE. Additionally, a certificate of appealability should not issue with respect to petitioner's claims for relief under the applicable two-part standard enunciated in *Slack v. McDaniel*, 529 U.S. 473, 484-85 (2000). With respect to any application by petitioner to proceed on appeal in *forma pauperis*, the Court certifies pursuant to 28 U.S.C. § 1915(a)(3) that an appeal of any Order adopting the Report would not be taken in "good faith." *See* Fed. R. App. P. 24(a); *Kincade v. Sparkman*, 117 F.3d 949, 952 (6th Cir. 1997).

IT IS SO ORDERED.

s/Michael R. Barrett
United States District Judge